

REMARKS

I. Status of the Claims

Claims 26, 30-44, 46-50, and 52-54 are pending in the application, claims 1-25, 27-29 and 45 having been previously canceled and claim 51 being presently canceled. Claims 26, 52 and 53 are under examination and are currently amended. Applicants acknowledge that the Examiner has withdrawn all previous rejections in view of Applicants' arguments in the response filed on August 5, 2011. Claim 26 is newly rejected under 35 U.S.C. § 103 as obvious over Dorken *et al.* in view of Nissen *et al.* The specific grounds for rejection and Applicants' response thereto, are set out in detail below. Claims 51-53 are objected to as being dependent upon a rejected base claim and the Examiner has indicated that these claims would be allowable if rewritten in independent form including the features of the base claim.

Claims 30-44, 46-50 and 54 are presently withdrawn and claims 30, 37, 41, 42 and 46 are amended to make minor amendments. Claim 54 is added to include canceled subject matter from amended claim 41. Should the present response result in the allowance of composition claims 26, 52 and 53, Applicants request rejoinder of the withdrawn claims that carry all the limitations of independent claim 26.

II. Rejection Under 35 U.S.C. § 103

Claims 26 is rejected as allegedly obvious over Dorken *et al.*, U.S. Patent 7,112,324 ("Dorken") in view of Nissen *et al.*, U.S. Publication No.: US 2002/0142964 ("Nissen") for the reasons set forth in the Office Action. Applicants traverse.

While in no way acknowledging that a *prima facie* case may have been established (indeed, Applicants believe it has not), Applicants direct the examiner to the declaration of Dr.

Thomas Urbig, submitted with the previous response of February 2011. Applicants submit that this evidence demonstrates surprising and unexpected results sufficient to establish the patentability of the claimed invention. Based on data described in the declaration, Dr. Urbig offered that a composition containing Construct 1 in combination with a buffer comprising citrate and lysine possessed improved stability as compared to the monomeric form of Construct 1 over time, and that such would be an unexpected result as compared to that expected with known buffers and other amino acids tested. Thus, Applicants submit that these data effectively rebut the obviousness rejection over Dorken in view of Nissen as reasoned in the current Action.

While in no way acquiescing to the Examiner's obviousness rejection of claim 26, in an effort to expedite prosecution, Applicants have amended claim 26 to incorporate the features of claim 51 and have canceled dependent claim 51. Applicants have also amended claims 52 and 53 into independent form with similar language as claim 26.

Reconsideration and withdrawal of the rejection, based on the preceding comments and foregoing claim amendments, is therefore respectfully requested.

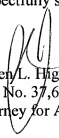
III. Request for Rejoinder

Applicants also request rejoinder of withdrawn Claims 30-44 and 54 (Group II) and 46-50 (Group IV) as all of these claims now depend from amended claim 26 containing the features of claim 51 that was not rejected on obviousness grounds. The withdrawn claims are commensurate in scope with the composition claims that now should be considered as allowable which is permitted under the *Ochiai* guidelines. Applicants, of course, reserve the right to file one or more divisional applications covering the subject matter of the non-elected and canceled claims.

IV. Conclusion

In light of the foregoing, applicants respectfully submit that all pending claims are in condition for allowance, and an early notification to that effect is earnestly solicited. The examiner is invited to contact the undersigned attorney at (512) 536-3184 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



Steven L. Highlander
Reg. No. 37,642
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
98 San Jacinto Blvd., Suite 1100
Austin, Texas 78701
(512) 536-3184

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